

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA)
)
)
v.) Criminal No. 4:18-cr-00011
)
)
MARCUS JAY DAVIS)
Et al.)

UNITED STATES' NOTICE OF ADDITIONAL DISCOVERY

The United States respectfully provides this notice to the Court of additional discovery items provided to Discovery Counsel throughout the last few weeks. The contents of that discovery and the grounds for this Notice are as follows:

1. This Court ordered the government to “substantially complete all pretrial discovery by April 1, 2019.” Third Amended Scheduling Order, ECF No. 364, ¶ 2. As the Order reflects and this Court has recognized orally at various status hearings, criminal discovery can be an ongoing process. Even though the Order does not require *all* discovery by the April 1 deadline, the government has treated the Order as if it did, and worked to disclose all discovery and *Jencks* materials before that date. Some of those efforts have been discussed at prior hearings. *E.g.*, Minute Entry, ECF Nos. 154, 262.

2. As detailed in a prior Notice of Additional Discovery, on April 4, 2019 (ECF No. 391), the United States provided what it believed to the last of its discovery and had repeatedly been assured by the Federal Bureau of Investigation that the discovery was complete. Despite these representations, the United States has made supplemental discovery disclosures to Discovery

Counsel after the April 1 deadline and has provided notice to the Court of these supplemental filings. To assure the Court that it believed discovery was then complete, at the April 2019 status hearing, the United States requested the appearance of the FBI Senior Supervisory Special Agent responsible for this investigation.

3. On June 28, 2019, the United States sent Production 19 to Discovery Counsel. This production contained 9 pages of lab notes from Assistant Medical Examiner Gayle Suzuki, who examined the body of Christopher Motley, and a 2-page evidence receipt. The remainder of the production was copies of proofs of service for various trial subpoenas. Most of this production does not constitute discovery under Federal Rule of Criminal Procedure 16.

4. On July 3, 2019, the United States sent Production 20 to Discovery Counsel. This production contains 7 pages of handwritten notes for an interview of Tanasia Coleman. The notes represent a portion of her *Jencks* material. These notes were inadvertently omitted from prior discovery productions and were provided as soon as the omission was brought to the attention of the United States by one of the defense counsel.

5. On August 7, 2019, the United States sent Production 21 to Discovery Counsel. This production contains approximately 10 pages of notes from two law enforcement witnesses (and their attachments) and are *Jencks* material for those witnesses. The attachments – photographs of a cellphone – have previously been disclosed to counsel. In addition, this production also contains two FBI reports and their attachments. One report is that of an interview conducted in response to Deshaun Trent's alibi notice, which was provided to the United States after the April 1 deadline. The second FBI report simply describes pretrial preparations of

evidence and is not, technically, discovery material. Neither of these reports (or their attachments) existed prior to the April 1 discovery deadline.

6. Finally, on August 8, 2019, the United States sent Production 22 to Discovery Counsel. The production contains a single, two-page document that was previously disclosed to defense counsel in 2018. One defense counsel asked for a better quality copy of the document, which the United States was able to provide.

7. The release of these documents months before trial does not prejudice the defendants. As has been its policy, the government will alert the Court by similar notice of any additional discovery.

WHEREFORE, the United States hereby respectfully provides the Court with notice of additional discovery.

Respectfully submitted,

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DATED: August 9, 2019

C E R T I F I C A T E

I hereby certify that a true and correct copy of the foregoing has been electronically filed with the Clerk by CM/ECF system, which will send notification of such filing to all counsel of record, on this 9th day of August, 2019.

s/Heather L. Carlton